



MINISTRY OF INTERIOR AND
COORDINATION OF NATIONAL GOVERNMENT

GUIDELINES FOR MEDIATORS AND MEDIATION



National Steering Committee on
Peacebuilding and Conflict
Management

FOREWORD

Kenya has been a relatively peaceful country since it attained independence in 1963. Kenya's economic and political stability has largely contributed to the holding of the nation together. Kenya's contribution to peace and mediation processes within the Great Lakes Region and the Horn of Africa remains noticeable. Classic examples include the central role played in the peace processes in Southern Sudan, Somalia, the Democratic Republic of Congo, as well as the peacekeeping support operations at the international level.

This notwithstanding, Kenya experiences conflict and security related challenges that negatively affect the national development agenda. Most of these challenges range from radicalization, terrorism and violent extremism; criminal gangs to crime, structural resource-based and environmental conflicts. The 2007/2008 Post Election Violence forms a soar in Kenya's history. Other typologies of conflicts that have continued to pose a threat to Kenya's development agenda include livestock rustling, conflicts over water, land, pasture, oil and minerals, fish and fish resources, forests and forests products, landlord-tenant conflicts, institutional conflicts, among others.

Over the years, the Government of Kenya has set-up mechanisms to ensure conflicts are adequately addressed at different levels of the society. This has been done through strengthening of institutions, formulation and implementation of policy and legislative frameworks, as well as providing various guidelines for resolving conflict in Kenya. Largely, the devolved system of governance provides an opportunity for addressing marginalization and resource distribution. It is evident that the Alternative Disputes Resolution Guidelines that have been developed in this regard will increasingly be utilized to settle disputes and resolve conflicts.

The nature of conflict, and its prevention, has changed dramatically over the last decades. This requires standing and sustainable mechanisms as well as established mediation and dialogue capacities at local and national levels. Resilient societies are characterized by capacities for dialogue, mediation, and inclusive decision-making that prevent the escalation of violent conflict and enhance peacebuilding processes.

The National and County Governments have been partnering with Development Partners and the Civil Society to build and strengthen national and County capacities for mediation. Immense focus has been on empowering national and local mediators and facilitators to serve as credible intermediaries and confidence-builders to improve relationships, reduce mistrust in institutions and among communities, and facilitate collaboration and coordination among polarized groups and parties in conflict. This approach is premised on the assumption that peace is only effectively sustained if national and local actors have the capacity to address potentially violent tensions through peaceful means. This includes conducting inclusive dialogues and implementing reforms or remedial measures agreed to therein. It calls for identification, enhancement and sustained development of internal capacities for mediation at both local and national levels to ensure that they are as inclusive as possible to address the changing nature of conflict.

These Mediation Guidelines are premised on the Sessional Paper No.5 of 2014 for the National Policy on Peacebuilding and Conflict Management in Kenya. They aim to provide and strengthen frame-work that guides both informal and formal mediation process in Kenya. The guidelines will provide public trust and confidence in mediation as a method of resolving disputes. Cognizant of the fact that ad hoc and poorly coordinated mediation processes with the best intention often fail in lasting peace, these Guidelines will provide an important resource pack for mediation work in Kenya. They encompass the wealth of experience of mediators working at the international, national and local levels. Past experiences of mediation processes around the world have also enriched these guidelines. The guidelines have been developed through a consultative process at the National and County levels. On behalf of the Ministry of Interior and Coordination of National Government, I would like to sincerely thank all those who contributed to the development of these Guidelines. It is my hope and expectation that these guidelines will provide an excellent read, learning experience and essential tool to all stakeholders in resolving disputes and conflicts through mediation.

Dr. Fred Matiang'i,
EGH Cabinet Secretary
Ministry of Interior and Coordination of National Government

ACKNOWLEDGEMENTS

The development of the Guidelines for Mediators and Mediation was done through a highly consultative process. From the very outset, I would like to thank Coffey International through the Jamii Thabiti Programme for the financial and technical support accorded throughout the development process. Special thanks go to the Chief of Party, Ms. Jackeline Mbogo together with the Head of Technical Delivery, Mr. James Ndung'u for the overall leadership and guidance. Special thanks go to Bonita Ayuko for the unwavering support that she accorded this process from inception to completion. To the rest of the colleagues at Coffey International, I say Thank You!

Renown Mediators ably led by Lt. Gen. Daniel Opande (RTD), Wilfred Kiboro, Paul E. O. Gondji, Lt. Gen. Hezron Murunga (RTD), Commissioner Alice Nderitu, Florence Mpayeei, Mama Phoebe Asiyo, EBS, Millicent Otieno, among others played a key role in the review of these Guidelines.

I also wish to thank the NSC Team led by Dickson Magotsi for the immense support, partnership and collaboration demonstrated throughout the formulation of these Guidelines. Special thanks to Nelly Waiya together with other colleagues at the NSC including Milka Chepkirui, Sam Ngunjiri, Peter Mwamachi, Prisca Kamungi, among others, who devoted their time and energy to ensure that this process was flawless. To the Technical Team, Peer Reviewers and the entire NSC fraternity and partners, I wish to thank you all. Indeed, you were a source of inspiration through the numerous peer reviews that were conducted. I also wish to thank all the National and County Government officials, Civil Society and Development Partners, Peace Committees, Cluster Peace Coordinators for the resourcefulness that you accorded this process. Finally, to Ms. Roselyn Odede, the Lead Consultant, who tirelessly worked on this document. We highly commend you. Lastly, to all those individuals and Institutions who I am not able to mention we are highly indebted to you.



**PETER THUKU, EBS
SECRETARY, PEACEBUILDING AND DISASTER RESPONSE
MINISTRY OF INTERIOR AND CO-ORDINATION OF NATIONAL
GOVERNMENT**

CONTENTS

GUIDELINES FOR MEDIATORS AND MEDIATION

1.	INTRODUCTION.....	pg 2
2.	LEGAL & INSTITUTIONAL FRAMEWORK	
2.1:	Domestic Legal Framework	
2.2:	International Legal Framework	
2.3:	Institutional Legal Framework	
3.	DEFINITIONS.....	pg 4
4.	TYPES OF CONFLICT THAT CAN BE MEDIATED UNDER THESE GUIDELINES	pg 6
5.	STEPS IN MEDIATION	pg 7
5.1:	Assessment of the Conflict	
5.2:	Ensuring Mediator Readiness	
5.3:	Ensuring Conflict Ripeness	
5.4:	Conducting the Mediation	
5.5:	Constructing a Peace Agreement.	
6.	PREPARING FOR THE MEDIATION	pg 8
7.	APPOINTMENT OF MEDIATORS	pg 12
8.	IMPARTIALITY/ OMNI-PARTIALITY	pg 12
9.	CONFIDENTIALITY	pg 12
10.	INTEGRITY	pg 13
11.	ACCREDITATION & RECOGNITION	pg 13
12.	TERMINATION	pg 13
13.	WITHDRAWAL OF A MEDIATOR	pg 13
14.	PEACE AGREEMENT	pg 14
15.	COHERENCE, COORDINATION & COMPLIMENTARITY OF MEDIAITON EFFORTS	pg 14
16.	DOCUMENTATION OF THE PROCESS & EXPERIENCES OF THE MEDIATOR	pg 14
17.	EXCLUSION FROM LIABILITY	pg 14
18.	REVIEW OF THE GUIDELINES	pg 14
19.	COHERENCE, COORDINATION & COMPLIMENTARITY OF MEDIAITON EFFORTS	pg 15
20.	DOCUMENTATION OF THE PROCESS & EXPERIENCES OF THE MEDIATOR	pg 15
21.	EXCLUSION FROM LIABILITY	pg 15
22.	REVIEW OF THE GUIDELINES	pg 15



MINISTRY OF INTERIOR AND COORDINATION OF
NATIONAL GOVERNMENT

GUIDELINES FOR MEDIATORS AND MEDIATION

1. INTRODUCTION.

The Ministry of Interior and Co-ordination of National Government is charged with mandates, including; National government coordination at counties; Internal State functions; and National Cohesion and Reconciliation Management amongst others.

The National Steering Committee on Peacebuilding and Conflict Management (NSC) was established in 2001 and anchored within the Office of the President, now re-designated Ministry of Interior and Coordination of National Government. It became operational in November 2002 with the placement of a Secretariat and is currently administratively provided for within the. It is an interagency that brings together peace stakeholders in a bid to co-ordinate and consolidate efforts geared towards peace building and conflict management in Kenya as well as cross-border.

The NSC is charged with the role of peacebuilding and conflict management, aimed at promoting peace among Kenyans. In line with its mandate the NSC developed Sessional Paper No. 5 of 2014 on National Policy for Peace Building and Conflict Management in an effort to strengthen, coordinate, consolidate and integrate various conflict management initiatives by state and non-state actors.

The Policy at Section 3.4 identifies Mediation and Preventive Diplomacy as one of the pillars for peace building and conflict management. It recognizes mediation and preventive diplomacy as being critical to conflict transformation as they provide avenues for community dialogue, negotiation and mediation. The Policy underscores the need to develop guidelines for mediators and mediation.

Conflict resolution processes fall into two broad categories. The adjudicative coercive processes, and the consensual non-coercive processes. Under the coercive processes are litigation and arbitration, and under the non-coercive processes are negotiation, mediation and conciliation.

The guidelines are intended to perform four major functions:

- i. To provide a frame work for mediation.
 - ii. To push for greater inclusivity in mediation, to actualize UN Security Council Resolution 1325, 2250 & 2280 and any other subsequent resolutions, that promote inclusion of women, youth and other special interest groups in peace processes.
 - iii. To increase collaboration, coherence, capacity and co-ordination amongst mediators.
 - iv. To promote public confidence and trust in mediation as a method for resolving disputes.
- These guidelines have been developed through a consultative and participatory process, involving a wide range of stakeholders across the country.

2. LEGAL & INSTITUTIONAL FRAMEWORK.

2.1: Domestic Legal Framework:

The Constitution of Kenya at Article 159(2)(c) recognizes alternative forms of dispute resolution mechanisms including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms. It provides that traditional dispute resolution mechanisms shall not be repugnant to justice and morality.

The constitution also requires parliament to form a mediation committee where senate and the national assembly fail to agree on a bill.

Kenya does not have a stand-alone mediation law, but mediation is recognized in various statutes, rules, policies and processes. These include:

- i. The Civil Procedure Act, provides that cases already filed in court can be referred to mediation.
- ii. Court Annexed Mediation Pilot Project Rules 2015.
- iii. The Employment Act 2007, which provides for conciliation and mediation of employer-employee disputes.
- iv. The Marriage Act, 2014 recognizes mediation as a process for resolving matrimonial disputes.
- v. The Nairobi Centre for International Arbitration Act 2013, handles mostly commercial domestic and International arbitration and mediation.
- vi. The Nairobi Centre for International Arbitration (Mediation) Rules 2015, make provisions for mediation and mediators accredited by the centre.
- vii. The National Cohesion and Integration Act, 2008 provides for mediation, conciliation and mediation in securing peace.
- viii. The National Police Service Act No. 11A of 2011, recognizes voluntary participation of the local community in the maintenance of peace.
- ix. The Sports Act 2013, provides for mediation of disputes arising from the Act.
- x. The Kenya 2016-2018 National Action Plan for the Implementation of UN Security Council Resolution 1325.
- xi. Sessional Paper No. 5 of 2014 on National Policy for Peace Building and Conflict Management which provides a framework for the promotion for sustainable peace by local communities, state and non-state actors.

2.2: International Legal Framework:

Mediation and peace dialogues in Kenya are also guided by several International and Regional Instruments and Resolutions. These include.

- i. The United Nations Charter
- ii. UN Resolution 37/10, the Manila Declaration on the Peaceful Settlement of Disputes, 1982.
- iii. UN Resolution 65/283 of 2011 on Strengthening the Role of Mediation in THE Peaceful Settlement of Disputes, Conflict Prevention and Resolution.
- iv. The UN Resolutions 1325, 1820 and 1888 on Women, Peace and Security.
- v. The UN Resolution 2250 on Youth, Peace and Security.
- vi. The African Union Protocol Relating to the Establishment of the Peace and Security Council of the African Union. 2002.

- vii. IGAD Protocol on the Establishment of a Conflict Early Warning and Response Mechanism. 2002.
- viii. East African Community Protocol on Peace & Security, 2013.
- ix. East African Community Protocol on Conflict Prevention, Management and Resolutions Mechanisms. 2013.

2.3: Institutional Legal Framework:

Mediation in Kenya is backed by Constitutional, International, and Regional provisions. This provides substantive legal backing for mediation and lends great support to peace processes in Kenya as anchored with the Peace Building and Conflict Management Secretariat (PBCM).

NSC brings together representatives from National Government Ministries, Departments and Agencies (MDAs), Commissions, Council of Governors' Secretariat, umbrella civil society organizations, media, international non-governmental organizations, women organizations, academia and research organizations, private sector, humanitarian agencies, parliament, development partners, and UN agencies. As a multi-agency organization, NSC is mandated with the co-ordination of peacebuilding and conflict management initiatives in the country and across the borders.

The NSC works closely with the National Cohesion and Integration Commission, the National Government Administration Officers, the National Police Service and Local Peace Structures. The peace structures include Peace Forums and Peace Committees.

The Peace Forums exist at County level to offer on the spot support to peace committees and other peace processes. They are co-ordinated by the NSC and give regular updates on all peace initiatives including mediation.

Peace Committees are community representative institutions that facilitate peace forums at the various governance levels and bring together traditional dispute resolution mechanisms involving elders, women, & religious leaders and modern mechanisms for conflict resolution (security agencies, NGOs).

The peace committee model has come a long way and is now embraced by non-pastoralists communities facing different levels of communal tensions (negative), violence and conflict within themselves. Its delegation to the drought-prone districts is no more, rather, the post-election violence (PEV) of 2008 witnessed in the country precipitated the replication of the DPC model in non-arid areas of Central, Coast, Western, Nyanza and the Rift Valley.

The NSC empowers the peace forums and peace committees thorough training, coordination, collaboration and other capacity building initiatives.

3. DEFINITIONS

Accreditation is a process of formal and public recognition and verification that an individual (organization or program), meets and continues to meet, defined criteria. There are a variety of terms used which encompass accreditation processes. These include 'approval', 'registration', 'licensing', 'recognition', 'certification' and 'credentialing'.

Alternative Dispute Resolutions: are other forms of dispute resolution including dialogue, negotiation, reconciliation, mediation, arbitration and traditional dispute resolution mechanisms. Traditional Dispute Resolution Mechanisms should not be used in a way that is repugnant to justice and morality or that can result in outcomes that are repugnant to justice or morality.

Arbitration: is an alternative way of solving disputes outside court processes, with the help of an independent third party who handles the dispute and makes a binding decision.

Conflict Analysis is the systematic study of the profile, causes, actors and dynamics of conflict to get a better understanding of the contextual realities. It is the foundation of conflict sensitivity, as it enables peace practitioners to be aware of the conflict context, so that they do not unintentionally fuel violent conflict or exacerbate tensions.

Conflict Cycle/Stages: The distinct phases a conflict goes through from pre-conflict, confrontation, crisis, crisis outcome and the post-conflict stage.

Conflict Early Warning: The act of raising an alert about the threat of new (or renewed) conflict sufficiently in advance for preparedness, response and preventive action.

Conflict Early Warning Mechanisms: Processes and structures that collect; analyse data on conflict indicators; and provide advance warning information about conflict risks and vulnerabilities.

Conflict Management: Refers to actions undertaken with the main objective of preventing the vertical (intensification of violence) or horizontal (territorial spread) escalation of existing violent conflicts

Conflict Mapping: A graphical technique used in conflict analysis to project the parties to a conflict, their relations, interests and depth of perceptions based on experiences in the context of the conflict. The mapping assists in comprehending the root causes of the conflict.

Conflict Prevention comprises methods, mechanisms, activities and strategies that are used to avert the escalation of conflict into violence.

Conflict-related Sexual Violence (CRSV) refers to rape, sexual slavery, forced prostitution, forced pregnancy, enforced sterilization and other forms of sexual violence of comparable gravity perpetrated against women, men, girls or boys that is linked, directly or indirectly (temporally, geographically or causally) to a conflict.

Conflict Resolution describes a state where the deep-rooted sources of conflict are addressed and resolved. This implies that the behaviour is no longer violent, attitudes are no longer hostile, and the structure of the conflict has been changed.

Conflict Sensitivity is the ability of the mediator to understand the interaction between the conflict and any interventions, so as to avoid negative impacts and maximize positive impacts.

Conflict Transformation aims to transform conflict into a constructive engagement dealing with cultural, structural, behavioural and attitudinal aspects of conflict. The term refers to both the process and the completion of the process. Transformation goes beyond the concept of conflict resolution; it focuses on long-term transformation of conflict.

Dialogue is a formal and/or informal interactive process through which people discuss and communicate.

Gender: Gender refers to the social attributes, challenges and opportunities as well as relationships associated with being male and female. These are socially constructed; context- and time-specific and changeable. Gender affects power relations in society and determines what is expected, allowed and valued in a woman and a man in a given context.

Gender Based Violence: Any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women or, including threats of such acts, coercion or arbitrary deprivations of liberty, whether occurring in public or in private life.” Gender-based

violence has become an umbrella term for any harm that is perpetrated against a person's will, and that results from power inequalities that are based on gender roles. Around the world, gender-based violence almost always has a greater negative impact on women and girls.

Inclusivity: is the extent to which the views, interests and needs of conflict parties and other stakeholders are represented and integrated into the mediation process and outcome.

Mediation: is a process where a third party assists two or more parties, with their consent, to prevent, manage or resolve a conflict.

Mediator is a person who facilitates communication between parties in dispute/conflict and helps them arrive at a mutually satisfactory agreement. A mediator is neither a judge nor an arbitrator – her/his is to assist and guide the parties and the process.

Mitigation: Measures undertaken to limit/minimise adverse effects that may result from a conflict.

Negotiation can be broadly defined as a process in which parties in conflict engage to exchange and consider proposals towards settling a dispute or forging a way forward.

Non-State actors: These include Civil Society Organizations (CSOs), and private sector actors involved in processes of peace-building and conflict management.

Peace: A state of harmony characterized by the absence of violent conflict and where people feel free of fear of violence. Peace is not just the absence of armed conflict/violent conflict: it presupposes the existence of healthy inter-personal and inter-community relations, socio-economic prosperity, a working political order and the enjoyment of fundamental rights by all. These rights include those relating to physical integrity of individuals but also those relating to their social and economic welfare.

Peace-building: is the long-term process of sustaining peace. It is the process that seeks to prevent, reduce and transform conflicts. It involves the implementation of measures to consolidate peaceful relations and create an environment which deters the emergence or escalation of tensions which may lead to conflict. Peace-building is used as 'an umbrella concept that encompasses not only long-term transformative efforts associated with capacity building, reconciliation, and societal transformation, but also peace-making and peacekeeping.

Sexual and gender-based violence (SGBV) refers to any act that is perpetrated against a person's will and is based on gender norms and unequal power relationships. It can be physical, emotional, psychological, or sexual in nature, and can take the form of a denial of resources or access to services. It inflicts harm on women, girls, men and boys.

State actors: These include state institutions/agencies and structures as well as regional and international organizations to which the state is a partner or signatory, which are engaged with processes to enhance peace and human security.

Violence: physical, emotional, psychological or economic act or behaviour that is intended to hurt or kill.

4. TYPES OF CONFLICT THAT CAN BE MEDIATED UNDER THESE GUIDELINES

Conflicts in Kenya have international, regional and national dimensions, and can be broadly classified as economic, socio-political and environmental.

Economic conflicts refer to the inter-connection between poverty and conflict. The conflicts include inequitable distribution of resources, marginalization, landlessness, underdevelopment and class differences.

Socio-political conflicts often result from negative ethnicity, power craving, social-marginalization of communities, disregard for the rule of law, impunity, unemployment, and organized criminal gangs used mainly by politicians.

Environmental conflicts are mainly over control, access, use, preservation and ownership of natural resources such as land, minerals, pasture, and water. This is due to scarcity of resources, economic marginalization of communities where the resources are based, environmental degradation, dwindling resources such as pasture and water due to climate change.

Conflicts that can be mediated under these guidelines, include and are not limited to:

- i. Livestock-rustling conflicts: occurs frequently amongst pastoral/neighbouring communities and commonly triggers ethnic tensions.
- ii. Organized criminal gangs and banditry conflicts: these gangs tend to deal with issues without recourse to the law. They usually operate as vigilante groups, unlawful militias, and political party(s) and candidate's security agents, and have no regard for the law, and reign terror on communities, towns and cities. We recognize that banditry and criminal gangs are outlawed by law, however the root causes of their activities usually disrupt peace, and can be mediated.
- iii. Cross-border conflicts: Kenya borders five countries, Ethiopia, Somalia, South Sudan, Tanzania and Uganda. The border communities usually carry out cross-border raids for livestock and other economic advantage. The country also experiences boundary conflicts internally.
- iv. Agro-pastoralist conflicts: these result from competing interests between agriculturalists and pastoralists over shrinking pastures and water sources.
- v. Land conflicts: are widely experienced in Kenya, in the form of squatter invasions/evictions, excision of forests, irregular land allocations, grabbing of public land/amenities and historical injustices.
- vi. Resource-based conflicts: conflicts over resources such as minerals, water and pasture.
- vii. Electoral conflicts: elections in Kenya inevitably lead to conflict, displacement of persons, violence, destruction of property, ethnic tensions, insecurity and strife. There are also conflicts over electoral results and nominations by political parties.
- viii. Human-wildlife conflicts: common amongst communities living next to national parks and lakes, due to invasion of their spaces by humans, and scarcity of food and water; wildlife occasionally damage crops, attack livestock and kill or maim humans.
- ix. Environmental degradation conflicts: includes depletion, pollution and degradation of the air, water, sea and cosmic realm, in activities such as oil spillage, poor dumping of waste, forest depletion, building on water channels, use of fossil fuels; poor extractive techniques, green-house gases and increasing e-waste. These issues lead to exacerbation of inter-group tensions and human-wildlife conflict.
- x. Institutional conflicts: these are conflict within institutions such Universities, and Schools; within political parties and by labour unions and their employers.
- xi. Religious conflicts: inter and intra faith conflicts have been experienced and is a recurring theme usually a contest for control of resources.
- xii. Class conflicts: based on the gap between the rich and the poor, fueling crimes targeting those perceived as rich.
- xiii. Emerging conflicts: conflicts are not static and new kinds of conflict shall emerge over time, like radicalization and terrorism.

5. STEPS IN MEDIATION

5.1: Assessment of the Conflict

An assessment of the conflict helps in understanding the conflict and the larger context, understanding the actors, and understanding the sources of power and leverage

5.2: Ensuring Mediator Readiness

In this step the mediator's ability to engage effectively is assessed, and where necessary the availability of requisite resources is assessed. Resources include personnel, equipment, venue and funding. These guidelines recognize that certain mediation processes at the community level may not require funding and can proceed in an informal set-up.

5.3: Ensuring Conflict Ripeness

In this step the parties assess the ripeness of the mediation, and identify ways and means of enhancing ripeness by helping the parties appreciate the costs and benefits of the mediation process, and identifying champions of the mediation process.

5.4: Conducting the Mediation

The mediator should be able to conduct the mediation by building and maintaining trust of the parties. She/he must be able to identify and manage spoilers, develop and execute strategies for advancing negotiations, and help the parties reach an agreement.

5.5: Constructing a Peace Agreement.

A successful mediation will conclude with the recording of a peace agreement. In the best-case scenario agreements arrived at should be recorded in writing. The guidelines however recognize that some community level agreements may not be reduced into writing. The agreement should contain timelines for implementation, and implementation plans.

6. PREPARING FOR THE MEDIATION

Effective mediation requires proper preparation. Preparation includes an analysis and proper understanding of the conflict, harnessing of human, financial and physical resources, building consensus over the choice and competencies of the mediator; and ensuring inclusivity of people and issues. It involves the skills and knowledge of the mediator, political goodwill and sufficient financial and administrative resources.

It includes planning for all phases of the mediation (pre-mediation, mediation, settlement and implementation), based on comprehensive conflict analysis, and proper stakeholder mapping. The planning should have regard to the fact that situations are versatile and may change over time. The strategies should therefore be adaptable and flexible.

Preparation enables the mediator to identify opportunities, map out possible challenges and be ready to handle them, to effectively guide the mediation by improving the capacities of the parties to negotiate, assisting them in reaching an agreement, and lobbying for implementation support.

To effectively prepare for mediation, the following issues should be considered and provided for:

I. Adequate resources

For a mediation to proceed smoothly it should be adequately resourced and this requires goodwill and a commitment from the responsible entity. The mediator and parties should ensure that they have all the requisite resources, including personnel, venue, funds and equipment.

The mediation process depending on the nature of conflict can be funded or contributed to by:

- i. Donors/ International Community
- ii. State actors, including both the National and County Government
- iii. Non-state actors, Civil Society, Faith Based Organizations,
- iv. The Community
- v. Political Parties
- vi. Well-wishers
- vii. The Parties involved in the dispute.

Choice of venue should take into account conflict sensitivity and the unique needs of the parties to the dispute. For instance, if the dispute is between two opposed religious groups, it would be insensitive to hold the mediation in the place of worship of one of the parties.

Inclusive mediation processes add complexity and require careful planning to ensure that adequate resources are in place to conduct broad consultations. Mediation teams should identify logistical, security, financial and other constraints preventing actors from participating, conscious that

these will frequently be of a different nature for women, youth, elderly, marginalized and other special interest groups.

II. Mediator(s) Selection

The choice of mediator(s) is crucial in determining the success of a mediation process. The mediator should enjoy broad acceptability; have competence; and adequate knowledge on the conflict to be able to properly handle the parties and the issues. The final choice of mediator is to be made and agreed upon by the parties in dispute.

The mediator and his team should also have adequate support. Researchers, experts and technical assistance should be engaged to assist with issues that involve technicality or require a level of expertise.

III. Conflict Analysis

A mediator should carry out a conflict analysis to be able to properly understand the context within which the conflict is situated to be able to properly assist the parties, and to avoid unintentionally fueling the conflict further. Mediation can take longer than expected and a mediator may need to continually update the analysis. A mediator may be assisted by experts to carry out the conflict analysis. Key issues to be analysed are the conflict profile, causes, actors and dynamics

KEY QUESTIONS WITHIN EACH AREA OF ANALYSIS

PROFILE/ CONTEXT ANALYSIS	What is the political, economic and socio-cultural context? What is the key driver(s) of the conflict? What are the connecting issues? What are the emergent issues? What are the gender aspects to look out for in the conflict? What conflict affected areas can be situated within the context? Is there a history of conflict?
CAUSES	What are the structural causes of conflict? What can be considered proximate causes of conflict? What triggers could contribute to the outbreak, escalation or prolonging of conflict? What gender nuances underlie the conflict? What factors can contribute to peace?
ACTORS	Who are the main actors? What are their needs and interests What are their goals, positions, capacities and relationships? Who are the friends of peace? Which actors can be identified as spoilers and why? Which non-actors can be identified as spoilers and why? What are the spoiler's needs and interests? Who are the other stakeholders, secondary actors, and hidden hands in the conflict?
DYNAMICS	What are the current conflict trends? What are the windows of opportunity? What scenarios can be developed from the analysis the conflict profile, causes and actors? What capacities for peace can be identified?

Properly conducted conflict analysis enables the mediator to develop an effective mediation strategy. This will improve her/his capacity to define issues, interests, positions and needs of the parties to the mediation, and to maintain impartiality. A mediator should conduct frequent internal assessments and be prepared to adapt the strategy as required.

The mediator should gather information from a wide range of sources and listen to many different actors to broaden understanding of the context.

IV. Mediation Process Design

Mediation process design refers to the formulation of a plan/strategy on the approach and organization of the mediation towards a successful mediation process.

The process should be clearly set out, explained to and accepted by all parties. It should provide a clear roadmap that defines how the parties and the mediator shall engage and how the mediation shall be carried out.

Trust and confidence among the parties can be fostered by clear and consistently applied ground rules for mediation. Involving participants in designing those ground rules is itself an exercise in building trust.

The mediation process should be discussed and agreed upon prior to the mediation. The issues for consideration include:

- a) **Objective:** the parties should agree on the issues and overall objectives of the mediation process. The mandate should be aligned to the objective and context of the process.
- b) **Structure and format of talks:** the format of the mediation should be agreed upon. It could be a large-scale conference, summit of key representatives, roundtable discussion, shuttle mediation, or bilateral talks.
- c) **Decision Rule:** the parties should provide for the manner in which a decision is arrived at, it could be by simple majority, two-thirds majority, consensus, unanimity, via secret votes or open show of hands.
- d) **Guidelines for participation:** the parties should agree on who qualifies as an appropriate participant, what constitutes appropriate and representative levels of participation, and how to ensure representation of those not directly at the table. The mediator should ensure he is able to guide the parties towards a process that is inclusive and takes account of gender, youth, marginalized and special interest groups.
- e) **Communication:** the parties should agree on the method of recording the process; confidentiality; whether to have closed or open meetings; progress reports; handling the media; and reporting back to constituents.
- f) **Timeframe:** the parties should agree on the schedule and pacing of the mediation, so that there are legitimate expectations on how long the process can take. This will also assist with logistical and budgetary planning.
- g) **Agenda & Sequencing:** the parties should agree on the structure of the agenda and determine whether to adopt the incremental approach which tackles issues from easy to hard; or the committee approach that tackles all issues together; or framework mediation that deals with general issues first and works out the details later.
- h) **Timing & Frequency:** here the parties determine when negotiations are held and how often meetings are to be held.
- i) **Guiding Principles:** the parties should agree on the procedures for handling sticky points; disputes/ differences arising during the mediation; and conduct of the parties which will include sensitivity and respect for all parties and diverse opinions.
- j) **Mandate of mediator(s)/ tracks:** the parties should clearly define the mandate of the mediator and state whether he is to act as convener, facilitator, Track-I or Track-II or both. The parties should agree on whether or not to undertake a multi-track approach, and how the tracks will intersect.

- k) Funding: the parties should understand and agree on the funding of the process. If there is a donor, the donor interests should be set-out and understood, and the process should consider how it may affect the process.
- l) Third Party Composition: the parties should agree on the composition of the third parties in terms of leverage, expertise, mandate and perception. They should also determine how to make co-ordination effective.
- m) Normative Framework: the parties should agree on the norms to be considered.
- n) Venue(s): the parties should agree on where the mediation and all accompanying activities shall take place.

V. Inclusivity

Inclusive mediation requires integrating diverse societal perspectives; those of conflicting parties and other stakeholders into the mediation process. An inclusive process, does not imply that all stakeholders can participate directly in formal negotiations; it facilitates a structured interaction between the conflict parties and other stakeholders to include multiple perspectives in the mediation process.

The UN DPA Guidance Note on Gender and Inclusive Mediation Strategies, outline the duties of the mediator in preparing and planning for an inclusive mediation. It addresses the following issues:

- a) Process: the mediator should design an inclusive mediation process with multiple entry points and diverse mechanisms for participation so as to integrate perspectives of conflict parties and other stakeholders, including women, youth, marginalized and special interest groups.
- b) Engagement Strategy: the mediator should identify civil society organizations or other informal groupings, for inclusion in Track II efforts and develop an engagement strategy at the outset of the mediation process with actors such as representatives from trade unions, business sector, human rights groups, women's organizations, religious institutions, marginalized, indigenous and other special interest groups. The mediator should also explore all options for including civil society, women, youth, marginalized and special interest groups in a mediation process for instance as official members of organizations, technical experts, observers, delegates in Track II and III consultations, or facilitate their access to conflict parties in the peace process.
- c) Technical Capacity: the mediator should facilitate effective inclusive participation by providing technical advice as needed for women, youth, marginalized and special interest groups to build their capacity and networks to develop their own agenda for change.
- d) Political goodwill: the mediator should facilitate regular meetings between women, youth, marginalized and special interest group leaders and leaders of conflict parties to discuss issues and generate greater political will for their equal participation.
- e) Limitations: the mediator should identify and address security, logistic, travel and financial constraints that may restrict women, youth, marginalized and special interest groups from participating in a mediation process.
- f) Implementation: the mediator should plan for inclusion of women, youth, marginalized and special interest groups in the implementation arrangement of the peace agreement and consider their role when designing oversight and dispute resolution mechanisms.

VI. Training and empowering parties and stakeholders.

The parties and all stakeholders, including women, youth, marginalized and special

interest groups usually need capacity building to strengthen their capacity to engage in the mediation. Mediation teams need to identify partners early in the process to help build the capacity of the parties, women, youth, marginalized and special interest groups. This may include offering training on negotiations and substantive issues, providing international expert advice and helping them form coalitions with other stakeholders to create common platforms of interest and agendas.

7. APPOINTMENT OF MEDIATORS

Appointment of a mediator can be verbal or in writing upon the consent of the parties in dispute. It is important that the parties accept the mediator, and therefore crucial that their consent is obtained before the mediator is appointed. Mediators can be appointed by a broad range of actors, these include but are not limited to the following:

- i. International Community
- ii. By National Steering Committee
- iii. By County Peace Forums
- iv. By Local Peace Committees
- v. By National Government Administration Officers
- vi. By National Police Service
- vii. By Parties
- viii. By Religious leaders
- ix. By Accepted Community leaders/elders
- x. Any other person to whom the disputing parties refer the dispute.

8. ROLE OF THE MEDIATOR

The mediator facilitates the mediation process and has specific roles. These include to:

- i. Manage and oversee the mediation process.
- ii. Communicate the process and structure of mediation to the parties in dispute.
- iii. Convene and coordinate the mediation team.
- iv. Conduct the mediation in a fair and unbiased manner.
- v. Ensure fairness and transparency of the process and outcome.
- vi. Clarify misunderstandings and establish trust.
- vii. Advise the parties and help them define the issues.
- viii. Enable the parties in dispute overcome obstacles to communication.
- ix. Document and record the proceedings where the parties concur to recording,
- x. Limit influence of meddlers and spoilers.
- xi. Record the agreement reached.
- xii. Notify the appointing authority (where it is not the parties in dispute) of the outcome.
- xiii. Establish way forward on conclusion of the mediation
- xiv. Monitor implementation of the settlement

9. QUALITIES OF A MEDIATOR

A mediator should possess the following qualities:

- i. Honesty & Integrity
- ii. Patience, tact and intelligence.
- iii. Good listening and communication skills
- iv. Good analytical skills
- v. Objectivity & self-control
- vi. Resilience
- vii. Credibility
- viii. Innovative
- ix. Impartiality

- x. Sensitivity
- xi. Knowledge & Awareness

10. CONSENT/ VOLUNTARY PARTICIPATION

Mediation is a voluntary process. A party cannot be compelled to participate in a mediation process against her/his will. This requires a lot of goodwill and tact to enable the disputants appreciate the need for and the benefits of mediation. Respected members of the community, community organizations and women's groups can encourage the parties and help build their trust in mediation.

Consent is largely dependent on trust, and confidence building mechanisms. Trust may be affected by historical biases, cultural prejudices, stereotypes, personal experiences and group dynamics. Confidence building mechanisms include transparent procedures and processes.

11. IMPARTIALITY/ OMNI-PARTIALITY

A mediator should only mediate disputes where she/he believes they will be impartial. If any bias or prejudice exists the mediator should either not take up the mediation or should withdraw (whichever applies). Mediators should also embrace the principle of omni-partiality, which refers to being on both sides at the same time, since their role is to assist both parties in their negotiations. The mediator should be able to assist without leaning to a particular side, and rather take all sides.

A mediator should avoid conduct that gives any appearance of partiality or prejudice.

- a) A mediator should not allow her/his personal views, standards, values or morals to influence her/his approach. There should be no appearance of partiality or prejudice on account of a party's character, religion, background, ethnicity, values, beliefs or conduct.
- b) Mediators should be aware of conduct which though innocent can be perceived as impartiality by a party. The mediator should not be overly familiar with one party or spend social time with a party.
- c) A mediator should not express an opinion on the merits of the dispute even if urged by both parties to do so. It may be perceived that the mediator has already decided in favour of one party, and not impartial.
- d) The mediator should not represent any of the parties in further processes involving the same dispute.

12. CONFLICT OF INTEREST

The mediator should disclose any known or potential issues that may lead to a conflict of interest at the start of the mediation, and at any point that it arises during the mediation. The mediator should not have competing interests or loyalties. Conflict of interest is not an outright disqualifying factor. The duty imposed on the mediator is to make disclosure to the parties in dispute and allow them to decide whether they think the conflict is of such nature as to compromise the mediator's partiality.

13. CONFIDENTIALITY

A mediator should keep all information arising from the mediation process confidential. Information should only be revealed with the consent of the parties; or where required to do so by law. The general rules on confidentiality include:

- i. The mediator should at the outset discuss with the parties to the dispute their expectations regarding confidentiality.
- ii. Confidentiality extends to the mediation proceeding, only those involved in the dispute and proceedings may attend.

- iii. Researchers may with the permission of the parties, be granted access to individual case files; observe the proceedings; and interview the parties.
- iv. A mediator should edit and remove all identifying information from mediation material passed on for purposes of research or training.

14. INTEGRITY

Integrity addresses the quality of being honest and having strong moral principles. It encompasses doing the right thing in a reliable way. A mediator should be a person of high integrity who will not compromise the interest of any of the parties to the dispute.

15. ACCREDITATION & RECOGNITION

Under these guidelines, the National Steering Committee shall be responsible for accrediting all mediators involved in peace-making mediation and shall maintain a national register/database of all accredited mediators.

Accreditation' is a process of formal and public recognition and verification that an individual (organization or program), meets and continues to meet, defined criteria. There are a variety of terms used which encompass accreditation processes. These include 'approval', 'registration', 'licensing', 'recognition', 'certification' and 'credentialing'.

Although a move towards a more consistent and meaningful accreditation is desirable, there are concerns that accreditation may stifle diversity, constrain practices or put professional interests above client and community interests. The system should therefore be adaptable and flexible to suit the conflict context and have regard to experience, practice and standing in the community.

The purpose of accreditation is to:

- i. enhance the quality and ethics of mediation practice;
- ii. protect consumers of mediation services;
- iii. build consumer confidence in mediation services; and
- iv. build the capacity and coherence of the mediation field.

16. TERMINATION

A mediation process may terminate:

- i. Upon the signing of a mediation settlement; or
- ii. Where it transpires upon consultation with the parties that the mediation is unlikely to result in a settlement; or
- iii. Where a party withdraws from the mediation; or
- iv. Where the settlement arrived at is illegal.

The mediator should explain to the parties his concerns and his decision to terminate the mediation process and inform the appointing authority of her/his decision.

17. WITHDRAWAL OF A MEDIATOR

A mediator may withdraw from a mediation process where:

- i. Her/his partiality is questioned; or
- ii. Where a conflict of interest arises; or
- iii. Where one or both of the parties request the mediator to withdraw; or
- iv. On grounds of incapacity due to ill health or other debilitating factors; or
- v. Where in the opinion of the mediator, it seems that the parties are insistent on arriving at an illegal settlement.

18. PEACE AGREEMENT

Where a settlement is reached, the mediator should encourage the parties to put it in writing, and to include sustainability, implementation, monitoring and enforceability strategies. The enforceability would provide for what happens where one party defaults or fails to comply. The monitoring and implementation clause would indicate the persons responsible for ensuring compliance. It can be the appointing body, or any other person trusted by both parties. The parties may include punitive measures for default such as monetary payments. It may also contain a clause that provides that the settlement may be filed in court for adoption as a court order, thus enhancing enforceability.

Components of a Peace Agreement will vary greatly from case to case, but may include:

- i. Security Guarantees,
- ii. Protection of Human Rights,
- iii. Return or Resettlement of Refugees and Internally Displaced Persons,
- iv. Social, Political, Legal and Economic Re-structuring,
- v. Compensation, Retribution and Restitution,
- vi. Implementation Strategies,
- vii. Sustainability of agreement,
- viii. Timelines,
- ix. Monitoring and Implementation,
- x. Dispute Resolution Mechanisms.

One key to fashioning a successful agreement is to write into that agreement strategies for implementation and for monitoring and (if possible) enforcing compliance with the terms of the agreement. It needs to be clear who is to do what by when, how performance is to be measured and by whom, and what will happen if targets are not reached. When these specifics are left vague, one or both sides can too easily procrastinate or evade their responsibilities.

19. COHERENCE, COORDINATION & COMPLIMENTARITY OF MEDIATION EFFORTS

Mediation processes usually involves a variety of parties and stakeholders with at times competing interests. These diverse parties may derail the mediation if not properly handled.

The NSC should endeavour to forge partnerships with other peace actors present in their geographic jurisdiction. The nature of the partnerships, including the division of labour, needs to be worked out on a case-by-case basis. For coherence to be achieved all mediation approaches and parties should identify and support a lead mediator. The partnership may also cover relevant financial, administrative, communications and reporting matters, in cases where the partners are providing financial and technical support. Attention should be paid to establishing sound systems of communication, information-sharing and decision-making between the partner organisations, keeping in mind the confidential nature of the peace processes.

To ensure co-ordination and co-operation, regular joint initiatives, including joint visits to area of conflict by the leadership of the organisations; participation by the staff of each entity in the activities of the other partners; public actions/activities to demonstrate unity between the organisations; establishment of mechanisms and processes for regular consultation and development of common responses to local dynamics; and joint fundraising for peace processes, if needed are crucial.

Complementarity and co-ordination can be enhanced through a clear division of roles, responsibilities and duties amongst the various parties, stakeholders and actors including women, youth, marginalized and special interest groups.

20. DOCUMENTATION OF THE PROCESS & EXPERIENCES OF THE MEDIATOR

For purposes of research, and to help develop and improve mediation processes, involved institutions, mediators and parties are encouraged to document the process and their experiences without breaching confidentiality. The reports will be domiciled with the National Steering Committee Research department and be available for research.

21. EXCLUSION FROM LIABILITY

The NSC, the mediator(s), their servants, agents or assigns are protected from personal liability and civil action for any acts or omissions done in good faith and with due authority.

22. REVIEW OF THE GUIDELINES.

These guidelines may be reviewed from time to time, as and when necessary by the National Steering Committee.



MINISTRY OF INTERIOR AND
COORDINATION OF NATIONAL GOVERNMENT



Ministry of Interior & Cordination of National Government
Harambee House, Harambee Avenue
P.O Box 30510,00100 Nairobi. Tel: +254-20-2227411
Email: ps.interior@kenya.go.ke,
ps.pais@kenya.go.ke